FOIA Litigation Considerations

Part I

Threshold Considerations

- How does the FOIA Officer learn that the agency has been sued?
- Who will represent the agency in court?
- What part does the agency's general counsel's office play?
- Federal Programs Branch, Civil Division, U.S. Department of Justice (Jim Kovakas, (202) 514-3319)

Jurisdiction & Venue

- A. **Jurisdiction**
  1. United States District Courts
  2. What must a requester allege in the lawsuit?
  3. What is the scope of the court's power?
  4. Statute of limitations

B. **Venue**

1. In which federal judicial district may a requester file a lawsuit?
2. District of Columbia=universal venue

Pleadings

A. **The Complaint**
   1. Who is a proper party defendant?
   2. Service of process

B. **The Answer**
   1. Filed within 30 days of service upon the proper party
   2. Must respond to each allegation
   3. Must assert affirmative defenses

Standard of Review

- *De novo* standard of review
- What is the administrative record?
- Deference by court on matters of national security
- Fee waiver issues
- Arbitrary and capricious standard of review in reverse FOIA actions

Exhaustion of Administrative Remedies

- What are administrative remedies?
- How does a requester exhaust the administrative remedies?
- Constructive exhaustion
- Payment of processing fees
- Failure to exhaust administrative remedies
- Mootness

Discovery

- What is discovery?
- Forms of discovery:
  - Interrogatories
  - Requests for admissions
  - Depositions
- Scope of discovery in FOIA lawsuits
- Adequacy of search and discovery
- Discovery and the *Vaughn* declaration